

1992

Salt Lake City v. Sherman B. Tate : Brief of Appellee

Utah Court of Appeals

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UTAH COURT OF APPEALS
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IN THE UTAH COURT OF APPEALS
STATE OF UTAH

_____	:	
SALT LAKE CITY, A	:	
Municipal Corporation,	:	
Plaintiff/Appellee,	:	Case No. 920079-CA
vs.	:	Priority No. 2
SHERMAN B. TATE,	:	
Defendant/Appellant.	:	
_____	:	

BRIEF OF APPELLEE

Appeal from a Judgment and conviction of Improper Vehicle Registration, in violation of Salt Lake City Ordinance, Section 12.28.020, and of Failure to Comply, in violation of Salt Lake City Ordinance 12.12.020, in the Third Circuit Court of Salt Lake County, Salt Lake Department, Honorable Floyd H. Gowans.

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FILED

JUL 15 1992

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH

_____	:	
SALT LAKE CITY, A	:	
Municipal Corporation,	:	
	:	Case No. 92007
Plaintiff/Appellee,	:	
vs.	:	Priority No. 2
SHERMAN B. TATE,	:	
	:	
Defendant/Appellant.	:	
_____	:	

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IN THE UTAH COURT OF APPEALS

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SALT LAKE CITY, A	:	
Municipal Corporation,	:	Case No. 92007
Plaintiff/Appellee,	:	
vs.	:	Priority No. 2
SHERMAN B. TATE,	:	
Defendant/Appellant.	:	
_____	:	

STATEMENT OF JURISDICTION

Following a bench trial before the Honorable Floyd H. Gowans, Third Circuit Court, Salt Lake Department, defendant was convicted of Improper Vehicle Registration, an Infraction, in violation of Section 12.28.020 of the Revised Ordinances of Salt Lake City and of Failure to Comply with an Officer, an Infraction, in violation of Section 12.12.020 of the Salt Lake City Code. This court has jurisdiction over defendant's appeal pursuant to Utah Code Ann. Section 78-2a-3(2)(d) (1990).

STATEMENT OF ISSUES

- I. WHETHER DEFENDANT WAS PROPERLY NOTIFIED OF THE CHARGES AGAINST HIM.
- II. WHETHER ANY PREJUDICE ALLEGED AT THE TRIAL COURT LEVEL WOULD WARRANT REVERSAL OF THE DECISION.

III. WHETHER THE DECISION OF THE TRIAL COURT IS CLEARLY
ERRONEOUS, REQUIRING IT BE OVERTURNED.

DETERMINATIVE PROVISIONS OR STATUTES

The determinative statute for this case is Sections 12.28.202 and 12.12.020 of the Salt Lake City Traffic Code regarding improper vehicle registration and failure to comply with an officer, which statutes are set out in the Addendum attached hereto.

STATEMENT OF CASE

Defendant-Appellant, Sherman B. Tate (hereinafter referred to as defendant) was issued a traffic citation by a Salt Lake City Police officer for a License Plate/Registration violation and for Failure to Comply With the Lawful Order of a Police Officer. Defendant entered a plea of not guilty and the case was tried before the Honorable Floyd H. Gowans on January 23, 1992. The defendant was found Guilty and sentenced on the same day.

STATEMENT OF FACTS

On November 30, 1991, at the location of approximately 600 East and 818 South, Salt Lake City, Utah, the defendant was observed driving a vehicle with no visible license plate. Officer White of the Salt Lake City Police Department attempted to pull the vehicle over. At which time the defendant drove to his own home failing to comply with the standard light command of a marked police vehicle requiring immediate pulling to and stopping at the right side of the road.

Having failed to comply, the defendant exited his vehicle in his own driveway at which time Officer White requested the defendant's driver's license. The defendant ignored the

officer's commands to remain where he was, and went into his home where he proceeded to take a personal phone call. He was removed from his home after a heated exchange with the officer and issued the for the license plate infraction and failure to comply with an officer.

SUMMARY OF ARGUMENTS

- I. DEFENDANT WAS GIVEN A PROPER CITATION AND CHARGED BY INFORMATION WHICH CLEARLY STATE THE CHARGES AGAINST HIM.
- II. THE DECISION OF THE TRIAL COURT IS NOT CLEARLY ERRONEOUS, THE DEFENDANT HAS FAILED TO MEET HIS APPEAL BURDEN.
- III. THERE IS NO SHOWING OF ERROR THAT WOULD NOT BE CONSIDERED HARMLESS.

ARGUMENT

- I. THE DEFENDANT WAS GIVEN FULL AND FAIR NOTICE OF THE CHARGES AGAINST HIM.

In a criminal case, the due process requirement of notice is satisfied by the filing of a charging information, which should state with "sufficient specificity to protect the defendant from multiple prosecutions for the same crime and to give notice sufficient for the one charged to prepare a defense." State v. Wilcox, 808 P.2d 1028, 1031-1032 (Utah, 1991). In the instant case, defendant received a citation listing the City Ordinances, and the location, date and time of the violations. Thereafter, an Information was filed by the City listing the offenses with which defendant was charged, the location, date and time. Defendant had sufficient notice to understand the charges against him, to prepare a defense and to protect him from multiple prosecution for the same offenses.

II. THE DECISION OF THE TRIAL COURT IS NOT CLEARLY
ERRONEOUS AND ITS VERDICT SHOULD BE UPHELD.

The standard of review for this Court is that the findings of the trial court must be found to be "clearly erroneous" or against the clear weight of the evidence before the Court can overturn the conviction. As an alternative, if the Court reaches a definite and firm conviction that a mistake has been made, the decision can also be overturned. State v. Walker, 743 P.2d 191 (Utah, 1987); State v. Goodman, 763 P.2d 786, (Utah, 1988); In the Matter of the Estate of Bartell, 776 P.2d 885 (Utah, 1989).

The defendant makes no proffer as to why the outcome would be different had he made the connection between "traffic" and criminal charges. The defendant had his day in court and has not met any burden on appeal showing that the decision of the trial court was clearly erroneous.

III. THE ENTRY OF A SUSPENDED JAIL SENTENCE WAS HARMLESS
ERROR.

It appears that the court imposed a jail sentence as well as a fine. The two charges are infractions under the Salt Lake City Code.

Since all jail was suspended, the error is harmless or at most the matter should be remanded to correct the sentence only.

CONCLUSION

The defendant was found guilty of violation the City traffic code. He was fined \$135. Well within the appropriate sentencing range of up to \$500 per charge.

The record supports the finding of guilt and the defendant has failed to make any showing that prejudicial error occurred.

Dated this _____ day of JUL 15 1992, 1992.

Cheryl D. Suke

MAILING CERTIFICATE

I hereby certify that I Mailed/Delivered a true and correct copy of the above Brief of Appellee to the defendant, Sherman B. Tate, 818 South 600 East, Salt Lake City, Utah 84102, this _____ day of JUL 15 1992, 1992.

Cheryl D. Suke

12.08.130

SALT LAKE CITY CODE

**12.08.130 Hazardous or congested places—
Traffic restrictions.**

The city transportation engineer is hereby authorized to determine and designate, by proper signs, places not exceeding one hundred feet in length in which the stopping, standing or parking of vehicles would create an especially hazardous condition or would cause unusual delay to traffic. (Prior code Title 46, Art. 2 § 73)

12.08.140 Emergency and experimental regulations.

A. The chief of police, by and with the approval of the city transportation engineer, is hereby empowered to make regulations necessary to make effective the provisions of the traffic ordinances of the city, and to make and enforce temporary or experimental regulations to cover the emergency or special conditions. No such temporary or experimental regulations shall remain in effect for more than ninety days.

B. The city transportation engineer may test traffic-control devices under actual conditions of traffic. (Prior code Title 46, Art. 2 § 68)

Chapter 12.12

**TRAFFIC CODE RULES AND
ENFORCEMENT**

Sections:

12.12.010 Obedience to traffic code required.

12.12.020 Police and fire department officials—Authority.

12.12.030 Public employees, workers and equipment on streets.

**12.12.040 Emergency vehicles—
Exemption conditions.**

12.12.050 Property owner's right to regulate traffic when.

12.12.060 Riding animals or using pushcarts on roadways.

12.12.070 Skateboards and other toy vehicles.

12.12.080 Removal of brush or obstructions impairing view.

12.12.010 Obedience to traffic code required.

A. **Unlawful Acts.** It is unlawful for any person to:

1. Do any act prohibited by this title;
2. Fail or refuse to do any act required by this title;

3. Operate any vehicle in violation of any provision of this title; or

4. Operate any vehicle unless such vehicle is equipped and maintained in compliance with this title.

(See Section 12.56.540 for sections subject to civil penalties.)

B. **Infractions.** Any person guilty of violating any provision of this title shall be deemed guilty of an infraction unless such offense is specifically designated as a Class B misdemeanor.

C. **Misdemeanor on Third Conviction.** Upon a third conviction of any moving violation, whether the same violation or different violations, within the prior twelve-month period, such third violation is specifically designated as a Class B misdemeanor.

D. **Infraction and Misdemeanor Penalties.** A person convicted of an infraction or a Class B misdemeanor, as provided in this section, shall be punishable as provided by Section 1.12.050, or its successor, of the Salt Lake City Code. (Prior code Title 46, Art. 3 § 75)

12.12.020 Police and fire department officials—Authority.

No person shall fail or refuse to comply with any lawful order or direction of an officer of the police or fire department, in their capacity as such officer. (Prior code Title 46, Art. 3 § 76)

12.12.030 Public employees, workers and equipment on streets.

A. The provisions of this title shall apply to the driver of any vehicle owned by or used in the

- 12.28.090 Lights, brakes, and other equipment.
- 12.28.100 Mufflers and exhaust systems.
- 12.28.110 Windshields, windows and obstructions to vision.
- 12.28.120 Fumes and smoke.
- 12.28.130 Loads projecting to rear—Flags and lights required.
- 12.28.140 Heavy, large, long and other restricted vehicles.
- 12.28.150 Restricted vehicles—Special permits.
- 12.28.160 Weight restrictions.
- 12.28.170 Mandatory reduction of load.
- 12.28.180 Width limitations for vehicles.

12.28.010 State vehicle inspection certificate required.

No person shall drive, stop or park, nor shall any owner or person in possession cause or knowingly permit to be driven, stopped or parked on any street or alley within this city any vehicle which is required under the laws of the state of Utah to be inspected, unless such vehicle has been inspected and has attached thereto, in proper position, a valid and unexpired certificate of inspection as required by the laws of the state. (Prior code Title 46, Art. 9 § 176)

12.28.020 Vehicle registration and license plates required.

A. Every vehicle, at all times while being driven, stopped or parked upon the streets or alleys of this city, shall:

1. Be registered in the name of the owner thereof in accordance with the laws of the state, unless such vehicle is not required by the laws of Utah to be registered in this state;

2. Display in proper position two valid, unexpired registration plates, one on the front and one on the rear of such vehicle; and

3. When required, current validation or indicia of registration attached to the rear plate and in a manner complying with the laws of the

state, and free from defacement, mutilation, grease and other obscuring matters so as to be plainly visible and legible at all times.

B. However, if such vehicle is not required to be registered in this state, and the indicia of registration issued by another state, territory, possession or district of the United States, or of a foreign country, substantially complies with the provisions hereof, such registration shall be considered compliance with this code. (Ord. 62-84 § 1 (part), 1984: prior code Title 46, Art. 9 § 177)

12.28.030 Camper—Defined.

As used in this section and Section 12.28.040, “camper” means any structure that contains a floor that is designed to be mounted on a motor vehicle and is designed to provide facilities for human habitation or camping, and is six feet or *more in overall length and five and one-half feet* or more in height from floor to ceiling at any point, and has no more than one axle designed to support a portion of the weight. (Prior code Title 46, Art. 9 § 177.4)

12.28.040 Motor vehicle with mounted camper—Registration requirements.

It is unlawful for any person to operate a motor vehicle with a camper mounted upon it upon the streets or alleys of this city, unless the camper mounted on such vehicle is currently registered, with the appropriate decal attached in plain sight at the rear of the camper, as provided by state law; provided, that this section shall not apply to a nonresident owner of a motor vehicle, which vehicle is currently registered and licensed in another state and which has an out-of-state camper mounted upon it. (Prior code Title 46, Art. 9 § 177.1, 177.3)

12.28.050 Registration certificate—Carrying and display.

The current, valid registration certificate of every motor vehicle shall at all times be carried in the vehicle to which it refers, or shall be carried